



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/652,582	08/29/2003	Tsuyoshi Aoki	0388-031714	9139

28289 7590 12/03/2004

WEBB ZIESENHEIM LOGSDON ORKIN & HANSON, P.C.
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PA 15219

EXAMINER


UNDERWOOD, DONALD W

ART UNIT	PAPER NUMBER
----------	--------------

3652

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center">Office Action Summary</p>	<p>Application No.</p> <p align="center">10/652,582</p>	<p>Applicant(s)</p> <p align="center">AOKI ET AL.</p>	
	<p>Examiner</p> <p align="center">Donald Underwood</p>	<p>Art Unit</p> <p align="center">3652</p>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08/29/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08/29/03 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>021304</u> . | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

1. The drawing is objected to under 37 CFR 1.84 (p)(5) as failing to contain numeral "T16" in line 15 on page 8 of the specification. Note "B16" in figure 1. It appears one of these numerals should be changed to the other. The drawing also fails to include "16" in line 6 in page 12. Note this numeral should appear in one of figures 1-5.

2. In the specification, page 6, line 24, "T4" should be changed to --T--. Note "T4" in line 26 appears to be correct.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

It is unclear how binding plates 16 are used in the species in figures 1-5. See the specification, page 12, line 6. Clarification is required.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Art Unit: 3652

Regarding claim 1, "ROPS", first occurrence, should be identified by words. Also "in" in line 8 should be --on-- and "into" in line 11 should be --around-- since "into" appears inaccurate.

Regarding claim 4, the phrase "the under via" in line 4 is unclear. It appears a phrase similar to --below the axle casing-- would be appropriate.

Regarding claim 5, "ROPS", first occurrence, should be identified by words. Also "in" in line 8 should be --on--.

Regarding claim 8, it contains the same inaccuracies as claim 4.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1; 4, 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takemura et al.

Takemura comprises loader attachment members 16, frame members 13, connecting members 12 and unlabeled ROFS supporting members. Note the claims do not require that the ROFS supporting members be directly connected to the axle casing.

While frame members 13 and connecting members 12 appear to be bolted together, the other connections between the above elements appear to be integral. However, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art it would have been obvious to construct the above elements in Takemura separately and bolt them together. See *Neruim v. Erlichman*, 168 USPQ 177, 179.

Regarding claim 2, note 12 in Takemura fig. 6.

10. Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muramoto et al in view of Nakamura.

Regarding the elements in Muramoto, see the preceding paragraph.

Nakamura shows bolts and binding plates 21 connecting front attaching members 20 and frame members 4, 4A and bolts connecting ROPS supporting members 30 and member 6.

It would have been obvious to connect ROPS supporting members and connecting member 12 and loader attachment members 15, 91 and frame members 13, all in Muramoto, with bolts and/or binding plates in view of the teaching in Nakamura.

Regarding claims 3 and 7, note binding plates 21 in Namura.

Regarding claims 4 and 8, note 12 in Takemura figure 6.

Art Unit: 3652

11. Any inquiry concerning this communication should be directed to D. Underwood at telephone number (703) 308-1113.

Underwood/vs
November 30, 2004

Donald W. Underwood 11/30/04
DONALD W. UNDERWOOD
PRIMARY EXAMINER